

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TRAN ENTERPRISES, LLC, d/b/a
NUTRITION DEPOT.

Plaintiff,

VS.

DHL EXPRESS (USA), INC.,

Defendant.

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CIVIL ACTION NO. H-08-2748

MEMORANDUM AND ORDER

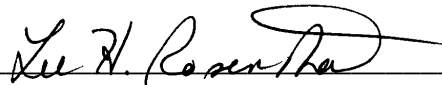
The plaintiff, Tran Enterprises, LLC d/b/a Nutrition Depot, filed this suit in Texas state court, alleging that the defendant, DHL Express (USA), Inc., had failed to remit COD funds for goods shipped, delivered, and paid for on delivery. DHL removed to federal court on the basis of federal question jurisdiction, asserting that the claims asserted were governed by the Carmack Amendment of the Interstate Commerce Act, 49 U.S.C. § 14706. Tran Enterprises moved to strike the notice of removal, Docket Entry No. 3, asserting that the Carmack Amendment did not apply to COD transactions as applied to carriers. In response, DHL properly construed the motion to strike as a motion to remand and set out authorities supporting the application of the Carmack Amendment to a carrier's obligations under a COD agreement. (Docket Entry No. 4).

In response, Tran Enterprises has moved for leave to file a first amended complaint. (Docket Entry No. 5). In this motion, Tran Enterprises waived its motion to strike the notice

of removal and request to remand. In the proposed amended complaint, Tran Enterprises asserts the Carmack Amendment as applying to its claims.

The motion for leave to amend, Docket Entry No. 5, is granted under the liberal standards of Rule 15 of the Federal Rules of Civil Procedure. The motion to strike, Docket Entry No. 3, is denied as moot and as waived.

SIGNED on December 1, 2008, at Houston, Texas.



Lee H. Rosenthal
United States District Judge